

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:09.12.2020

CORAM :

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.No.15013 of 2019
and
Crl.M.P.No.7361 of 2019

S.Visalatchi ... Petitioner /Accused

Vs

State Rep., by,

1.The Inspector of Police,
District Crime Branch, Krishnagiri,
Krishnagiri District.

2.Pushpa

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code praying to call for the records and quash the F.I.R. in Crime No.4 of 2019 on the file of the Inspector of Police, District Crime Branch, Krishnagiri District.

For Petitioner : Mr.P.M.Jayachandran.

For Respondents: Mr.S.Karthikeyan,

Additional Public Prosecutor for R1.

Mrs.Manjula Charan for R2.

O R D E R

(through Video Conference)

This Criminal Original Petition has been filed praying to quash the First Information Report registered in Crime No.4 of 2019 on the file of the Inspector of Police, District Crime Branch, Krishnagiri.

2.Heard Mr.P.M.Jayachandran, learned Counsel for the Petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent and Mrs.Manjula Charan, learned Counsel for the second respondent.

3.The averments found in the First Information Report is that the deceased Chinnasamy who is the father of the second respondent is having two wives. Through the first wife viz.,Chinnakannu, the second respondent herein, her sister Rani,

brothers Venkatesan and Govindaraj were born. Similarly the deceased gave birth to one Sivasakthi through his second wife viz.,Chinnappa. The family of the deceased is having an ancestral property in Paiyur Village. Before the death of the deceased, in respect to the property partition has not happened in the family of the second respondent. In the relevant point of time, the brother of the second respondent viz., Mr.Govindaraj who is now arrayed as accused in the petition mentioned First Information Report, obtained certificate from the Village Administrative officer as the property measuring 10 cents in S.No.202/9 is in his possession. After obtaining the said certificate, he sold out the said property to one Visalatchi who is the petitioner herein and Boopathy vide Document No.2147 of 2015.

4.However, the said transaction came to the knowledge of the second respondent only in the year 2016. Thereafter, she approached this Court by filing Crl.O.P.No.28839 of 2017 dated 21.12.2017 and obtained order for registering the case against the petitioner and others. Thereafter, upon the order passed by this Court, the said respondent police registered the petition mentioned First Information Report against the brother of the petitioner. Only in the said circumstances, the petitioner is before this Court praying to quash the said First Information Report.

5.The learned Counsel for the petitioner would contend that in respect of the transaction made between the petitioner viz., Visalatchi and Boopathy in the year 2015, the second respondent herein filed a suit in O.S.No.177 of 2016 on the file of the District Munsif, Krishangiri praying to declare the sale deed dated 07.08.2015 in Doc.No.2147 of 2015 as null and void. Further, in the said suit, she prayed the relief of partition. According to the petitioner, after filing the said suit, registering the case against the petitioner is abuse of process of law and if the Court permits to continue the investigation, the same would cause much prejudice to either parties in completing the trial in Civil Proceedings.

6.Per contra, the learned Counsel appearing for the second respondent would contend that during the relevant point of time, the brother of the petitioner fabricated false document with the help of the Village Administrative Officer and executed sale deed in favour of petitioner, which is void one. Therefore, for the offence of forgery, a case has been registered against the petitioner. In otherwise registering the case against the petitioner cannot be construed as abuse of process of law.

7.Now on considering the rival submissions made by either side, it is admitted on either sides that in respect of the

property now claimed by the second respondent, she has filed a suit in O.S.No.177 of 2016 and the same is pending before the competent Civil Court. The issue involved in the said case is whether the certificate issued by the Village Administrative Officer is genuine or fabricated. In fact, in the suit filed by the second respondent, the said issue is necessarily to be decided for disposing the said suit.

8.At this juncture, it is relevant to see the Judgement of our Hon'ble Apex Court in the case of "Rajeshbhai Muljibhai Patel and others -vs- State of Gujarat and another" reported in "(2020) 2 Supreme Court Cases (Cri) 239" wherein our Hon'ble Apex Court has held as follows:

"20....When the issue as to genuineness of receipts is pending consideration in the civil suit, in our view, the FIR ought not to have been allowed to continue as it would prejudice the interest of the parties and the stand taken by them in the civil suit."

Therefore, applying the ratio laid down in the above referred Judgement with this case, herein also issue related to the suit is whether the alleged document is genuine or not. Therefore, permitting to continue the investigation in the petition mentioned First Information Report will cause prejudice to the petitioner. Therefore, the impugned First Information Report is liable to be quashed.

9.Accordingly, this Criminal Original Petition is allowed and the First Information Report in Crime No.4 of 2019 is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
District Crime Branch, Krishnagiri,
Krishnagiri District.

2.The Public Prosecutor, High Court of Madras, Chennai.

CrI.O.P.No.15013 of 2019

and

CrI.M.P.No.7361 of 2019

A.SK(07.01.2021)